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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,481	03/01/2004	Vittorio Accomazzi	67647/00048	7552
27871 7590 12/31/2008 BLAKE, CASSELS & GRAYDON LLP BOX 25, COMMERCE COURT WEST 199 BAY STREET, SUITE 2800 TORONTO, ON M5L 1A9 CANADA				
EXAMINER				
YEH, EUENG NAN				
ART UNIT		PAPER NUMBER		
2624				
MAIL DATE		DELIVERY MODE		
12/31/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/788,481

**Applicant(s)**

ACCOMAZZI ET AL.

**Examiner**

EUENG-NAN YEH

**Art Unit**

2624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 28, 29 and 32.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1, 3-27, 30 and 31.  
Claim(s) withdrawn from consideration: 2.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Bhavesh M Mehta/  
Supervisory Patent Examiner, Art Unit 2624

/Eueng-nan Yeh/  
Examiner, Art Unit 2624

Continuation of 11, does NOT place the application in condition for allowance because:

A) Applicant's Remark: "Applicant assumes that the rejections of claims 28-29 is in error as these claims have been deemed allowable" at remarks page 6, line 4.

Examiner's Response: Claims 28, 29 and 32 are allowed.

B) Applicant's Remark: "As can be seen from the above, George defines fuzzy membership based on the distance between adjacent points, and in no way teaches or suggests looking at the path between points in a structure" at remarks page 3, line 1.

Examiner's Response: As suggested by George that membership based on the distance between adjacent points. As depicted in figure 15, numerals 210 and 212 are two adjacent points which can be used to define a path and this is the path between points in a structure #202.

C) Applicant's Remark: "present application the equations used to define the connectivity of the pixel depends on its location, its pixel value and the value of its neighbor" at remarks page 4, line 1.

"In fact, for a non convex object, such as a kidney of a bean-shape object, it is possible to find two points which segment is not included in the set" at remarks page 4, line 10.

Examiner's Response: it is noted that the features upon which applicant relies (i.e., connectivity equation and non convex object) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

D) Applicant's Remark: "Applicant also believes that George and Udupa, even if combined, would not work together without undisclosed modifications that are not readily apparent from even a careful review of both references. For instance, equation 13 in Udupa defines the fuzzy connectivity and this is completely different from what is defined by George in column 14 at line 60 and column 17 at lines 33-43. It is unclear how such definitions of connectivity would even work together as they utilize entirely different parameters and principles" at remarks page 5, 4<sup>th</sup> full paragraph.

Examiner's Response: Teaches from George himself that several connectivity methods suggested. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

E) Summary: While applicant's principal argument has been addressed above, the remainder of applicant's arguments has been considered, but are not convincing. The Examiner's position remains unchanged.